



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1000]

RIN 1625-AA00

Safety Zone; Swim Events in the Captain of the Port New York Zone; Hudson River, East River, Upper New York Bay, Lower New York Bay; New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish seven temporary safety zones for swim events within the Captain of the Port (COTP) New York Zone. These proposed zones will be established on the navigable waters of the Hudson River, East River, Upper New York Bay and Lower New York Bay. These temporary safety zones are necessary to protect the maritime public and event participants from the hazards associated with these events. Persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zones unless authorized by the COTP New York or the designated representative.

DATES: Comments and related material must be received by

the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Requests for public meetings must be received by the Coast Guard on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2011-1000 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Ensign Kimberly

Farnsworth, Coast Guard; telephone (718)354-4163, e-mail Kimberly.A.Farnsworth@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-1000), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as

having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2011-1000" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-1000" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe

a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1266, 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

Marine events are frequently held on the navigable waters within the COTP Sector New York Zone. The COTP has determined that swimming events in close proximity to marine traffic pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, and large numbers of swimmers in the water has the potential to result in serious injuries or fatalities. In order to protect the safety of all waterway users including event participants and spectators, this temporary rule establishes temporary safety zones for the duration of the events.

This rule prevents vessels from entering into,

transiting through, mooring or anchoring within the areas specifically designated as the regulated areas during the periods of enforcement unless authorized by the COTP, or the designated representative.

Discussion of Proposed Rule

In previous years, the Coast Guard has established special local regulations, regulated areas, and safety zone for these annual recurring events on a case by case basis to ensure the protection of the maritime public and event participants from hazards associated with these events. The Coast Guard has not received public comments or concerns regarding the impact to waterway traffic from these events.

These swim events pose significant risks to participants, spectators and the boating public because of the number of swimmers, kayakers and recreational vessels that are expected in the area of these events.

This temporary rule creates safety zones for seven swim events on the navigable waters of the Hudson River, East River, Upper New York Bay and Lower New York Bay. A portion of the navigable waters will be closed during the effective periods to all vessel traffic except local, state or Coast Guard patrol crafts. The events and locations are as follows:

(1) The Iron Man Open Water Swim Clinics: All waters of the Hudson River in the vicinity of Palisades State Park, NJ.

(2) The New York Triathlon Swim Clinics: within the waters of the Lower Hudson River in the vicinity of West 100th Street and West 81st Street, Manhattan, NY.

(3) The Verrazano Bridge Swim: within the waters of Lower New York Bay in the vicinity of Fort Hamilton, Brooklyn, NY and Fort Wadsworth, Staten Island, NY.

(4) The Rose Pitonof Swim: within the waters of the East River, Upper New York Bay and Lower New York Bay, from East 26th Street, Manhattan, NY to Steeplechase Pier, Coney Island, NY.

(5) The Liberty to Freedom Swim: within the waters of the Upper New York Bay, from Liberty Island, NJ to North Cove, New York, NY.

(6) Ederle Swim: within the waters of the Hudson River between North Cove Marina, New York, NY and Sandy Hook, NJ.

(7) Brooklyn Bridge Swim: within the waters of the East River in the vicinity of Brooklyn Bridge Park, Brooklyn, NY and East River Park, New York, NY.

The proposed regulation would prevent vessels from transiting areas designated as safety zones during the periods of enforcement to ensure protection of the maritime

public and event participants from hazards associated with the listed swim events.

Only event sponsors, designated participants, and official patrol vessels will be allowed to enter the regulated areas. Spectators and other vessels not registered as event participants may not enter the safety zones without permission of the COTP or the designated representative.

The specific times, dates, regulated areas, and enforcement period for each event will be provided through the Local Notice to Mariners, Broadcast Notice to Mariners and online at <http://homeport.uscg.mil/newyork>.

The final rule will not be published 30 days before the event and the effective date of this proposed rule as is generally required by 5 U.S.C. 553(d)(3). The Coast Guard will accept comments on this shortened period and address them in the final rule.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory

action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

These safety zones will be of limited duration, and vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated areas. Furthermore, vessels may be authorized to transit these zones with the permission of the COTP New York or the designated representative.

Notifications will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events. No new or additional restrictions would be imposed on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in

their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit, fish or anchor in the designated safety zones during the enforcement period of the swim events.

The safety zones will not have significant economic impact on a substantial number of small entities for the following reasons: vessels will only be restricted from safety zone areas for a short duration of time; vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated areas; the Coast Guard has promulgated safety zones in accordance with 33 CFR Part 165 for all event areas in the past and has not received notice of any negative impact caused by any of the safety zones; and notifications will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and

that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in

sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy

action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action appears to be one of a category of actions which do not individually or cumulatively have a significant effect on the human environment.

A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under ADDRESSES. This proposed rule involves the establishment of four temporary safety zones for swim events. This rule appears to be categorically excluded, under figure 2-1, paragraph (34)(g), by the Commandant Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-1000 to read as follows:

§165.T01-1000 Swim Events in the Captain of the Port New York Zone, Hudson River, East River, Upper New York Bay, Lower New York Bay, New York, NY.

(a) Regulation. The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the swim events listed in TABLE 1 of § 165.T01-1000. These regulations will be enforced for the duration of each swim event. Notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners. First Coast Guard District Local Notice to Mariners can be found at <http://www.navcen.uscg.gov/>.

(b) Definitions. The following definitions apply to this section:

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP) New York Zone to act on his or her behalf.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Vessel operators desiring to enter or operate within the regulated areas shall contact the COTP or the designated representative via VHF channel 16 or 718-354-4353 (Sector New York command center) to obtain permission to do so.

(d) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or the designated representative.

(e) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(f) The COTP or the designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(g) For all swim events listed in TABLE 1 to §165.T01-1000, vessels not associated with the event shall maintain a separation of at least 100 yards from the participants.

TABLE 1 TO §165.T01-1000

1.0		Hudson River
1.1	Iron Man Open Water Swim Clinics	<ul style="list-style-type: none">• Date: June 30 and July 14, 2012• Rain Date: NA• Enforcement Period: 8:00 a.m. to 10:30 a.m.• Location site: All waters of the Hudson River in the vicinity of Ross Docks Camp

	Ground, bound by the following points: 40°51'41"N, 073°57'13"W; thence to 40°51'41"N, 074°56'12"W; thence to 40°54'00"N, 073°54'57"W; thence to 40°54'00.0"N, 073°56'06"W; thence along the shoreline to the point of origin.
1.2 NYC Triathlon Swim Clinic	<ul style="list-style-type: none"> • Date: June 17, 2012 • Rain Date: June 16 or June 24, 2012 • Enforcement Period: 10:00 a.m. to 11:30 a.m. • Location: All waters of the Hudson River in the vicinity of Ross Docks Camp Ground, bound by the following points: 40°48'0.15"N, 073°58'30.59"W; thence to 40°48'19.17"N, 073°59'9.76"W; thence to 40°47'33.29"N, 073°59'43.51"W; thence to 40°47'12.76"N, 073°59'3.87"W thence along the shoreline to the point of origin.
2.0	Lower New York Bay
2.1 Verrazano Bridge Swim	<ul style="list-style-type: none"> • Date: July 21, 2012 • Rain Date: NA • Enforcement Period: 12:30 p.m. to 1:30 p.m. <p>Location: All waters of the Lower New York Bay in the vicinity of the Verrazano Bridge, bound by the following points: 40°36'12.74"N, 074°3'12.92"W; thence to 40°35'59.20"N, 074°3'8.72"W; thence to 40°36'27.30"N, 074°2'3.101"W; thence to 40°36'32.91"N, 074°2'9.30"W; thence along the shoreline to the point of origin.</p>
3.0	East River, Upper New York Bay, Lower New York Bay

3.1 Rose Pitonof Swim	<ul style="list-style-type: none"> • Date: August 18, 2012. • Rain Date: NA • Enforcement Period: 9:00 a.m. to 5:00 p.m.
	<p>Location: All waters of the East River, Upper and Lower New York Bays, bound by the following points:</p> <ul style="list-style-type: none"> • 40°44'11.55"N, 073°58'21.58"W; thence to 40°44'19.63"N, 073°57'45.25"W; thence to 40°34'10.43"N, 073°58'59.88"W; thence to 40°32'16.62"N, 074°2'34.30"W thence to 40°36'13.95"N, 074°3'8.58"W; thence to 40°38'38.81N, 074°4'15.14"W thence back to the point of origin.
4.0	Upper New York Bay, Hudson River
4.1 Liberty to Freedom Swim	<ul style="list-style-type: none"> • Date: September 15, 2012 • Rain Date: NA • Enforcement Period: 3:00 p.m. to 5:00 p.m. <p>Location: All waters of the East River, Upper and Lower New York Bays, bound by the following points: 40°41'24.15"N, 074°2'33.47"W; thence to 40°41'35.25"N, 074°1'10.95"W; thence to 40°42'48.91"N, 074°1'3.44"W; thence to 40°43'0.17"N, 074°1'47.99"W; thence to 40°41'27.55"N, 074°2'49.72"W thence back to the point of origin.</p>
5.0	Upper New York Bay, Hudson River
5.1 Brooklyn Bridge Swim	<ul style="list-style-type: none"> • Date: July 15, 2012. • Rain Date: NA • Enforcement Period: 7:15 a.m. to 9:15 a.m. • Location: All waters of the East River, bound by the following points: 40°42'17.04"N, 073°59'21.87"W; thence to 40°42'12.03"N, 073°59'46.17"W; thence to 40°42'24.48"N, 074°0'4.09"W; thence to 40°42'34.19N, 073°59'31.41"W; thence back to point of origin.
6.0	Upper New York Bay, Lower New York Bay

6.1 Ederle Swim

- Date: August 18, 2012.
 - Rain Date: August 19, 2012
 - Enforcement Period: 10:00 a.m. to 7:30 p.m.
 - Location: All waters of the Hudson River, Upper and Lower New York Bays, bound by the following points:
40°42'48.13"N, 074°0'58.74"W; thence to
40°42'3.20"N, 073°59'54.84"W; thence to
40°36'32.70"N, 074°2'10.73"W; thence to
40°28'4.43N, 073°59'38.14"W; thence to
40°28'41.58"N, 074°0'55.27"W; thence to
40°38'38.77"N, 074°4'15.05"W; thence to
40°43'0.31"N, 074°1'48.11"W thence back
to point of origin.
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Dated: March 23, 2012

L. L. Fagan,
Rear Admiral, U.S. Coast Guard
Captain of the Port New York

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